James Cunningham V-72323
California Men's Colony State Prison
P.O. Box 8101
San Luis OBISPO, Ca. 93409-8101
IN Pro Per

FILED
08 JAN 22 PM 4:18

ORIGINAL

NUNC PRO TUNC
JAN -9 2008

UNITED STATES District Court
SOUTH District of CALIFORNIA

James Cunningham Petitioner, V.S. John Marshall (warden CMC-E) Respondent	Motion for stay and ABEYANCE of Federal HABEAS PETITION to EXHAUST ADDITIONAL UNEXHAUST CLAIMS IN THE STATE COURTS. RESPONSE: To United STATE DISTRICT COURT; Showing CAUSE.

Petitioner, JAMES Cunningham, in Pro Per, respectfully Moves this Honorable Court to show cause of stay of ABEYANCE, while Petitioner goes back to the State Court to Exhaust additional, UNEXhausted claims that were not included in the Petition in wake of The U.S. Supreme Court recent decision in Rhines v. Weber (2005) 124 S. Ct. 1528. This Motion is based on the facts and and Memorandum of authorities stating why the District Court should grant the Petitioner's stay and abeyance.

MEMORANDUM POINTS AND AUTHORITIES

PETITIONER: Would Like to EXHAUST these UNExhausted Claim (SEE, E.g. Kelly v. Small, 315 F.3d). Also to Prove beyond a reasonable doubt In re Winship (1970) 397 U.S. 358, 90 S.Ct 1068.

West's Ann. Cal. Penal Code: 686 Criminal Procedure Preliminary Provisions Current through CH. 172 of 2007 Reg. Sess. urgency legislation 686. Defendant rights: speedy and Public trial: Production of witness: confronting adverse witness: hearsay evidence: deposition. In a criminal action the defendant is entitle to: Search warrants 1524 Issuance; grounds: special Master. West's ann. Cal. Health & saftey Code: 11488.4 Petition of forfeiture; Physical seizure of assets: Notice of seizure: investigation: Publication: Motion for return of Property: witnesses: for causes challenges. CA. CIV. Pro 230. CA Jur. 3d Criminal Law: Post-Trial Proceedings. 533 Ineffective representation by Defense; Counsel. 1 Circumstances Giving Rise to Prejudicial conflict of interests between criminal Defend-dant and Defense Counsel-State cases. AM. Jur. 2d Criminal Law 114: Effect of finding of competence to stand trial. CA Jur. 3d Criminal Law: Post-trial Proceeding (533) Ineffective representation by Defense Counsel. 5* Within CAL. Crim. L. 3d Criminal Trial. 694 Necessity for Present Mental Competence. 5** Within Cal. Crim L. 3d Criminal Trial Test of incompetence. People v. Kurbegovic (App. 2 Dist. 1982) 188 CAL. RPTR. 268, 138 CAL (APP 3D 731) A proceeding to determine the question of Present sanity of accused not a part of the criminal Prosection but is a special proceeding. Civil in character. (EX Partie) see in Shaw (App. 1 Dist. 1953 115 Cal. App. 2d 753 252 P. 2d 970. Evidence (Sixth & fourteeth amendments) U.S. CONST: Crawford V. Washington (2004) (541 U.S. 36; Cd; Const Art 1, 7.) Bockting V Bayor (9th Cir. 2005) 399 F. 3d 1010; Nature and grounds of incompetency in General: U.S. V. Alonce-Barrera, 227 F. 3d 959 Ca. 9 (Cal. 2001)...

Respectfully Submitted James Cunningham Petitioner in Pro Per

Date: 12-25-07 I, James Cunningham declare under penalty of perjury that the foregoing is true and correct to the best of my knowlege & beliefs.

[redacted] INTRODUTION for stay of ABEYANCE

To The Honorable Court:

Petitioner is introducing the Court's with Serious Motions for satification. The Court ask. Petitioner to show cause for a stay of ABEYANCE. Petitioner will stand bye these Motions discovered an executed them for a stay of ABEYANCE. Petitioner hope the Court show consideration of these Newly discover facts. Petitioner and imate Griffin form this cause as Pro Per. Since these newly discored trial errors are so flauce around. The ProPer's will Place a Master Idex the Motions and R.T. EXIHITS will be Place upon this introduction 1,2,3,4,5, to refer too. The claims are scattered about the R.T.'s and throught out Trial. So the Master Idex will be suffient for finding well needed clauses. So to find the abusive error's of Petitioners injustic, and the highly of relief ensued.

I, James H Cunningham declare under Penalty of perjury that the forregoing is true and correct to the best of my knowlege & beliefs. Respectfully submitted

[signature]

sign: Respectfully submitted:

[signature]

DATE: 12-25-07

DEC 25 2007

Mr. Elliott Griff

DEC 2 5 2007